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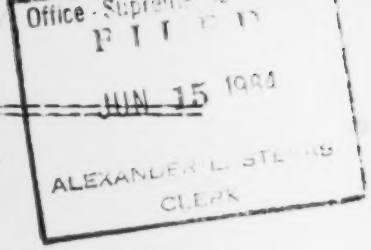

IN THE SUPREME COURT

OF THE

UNITED STATES

OCTOBER TERM, 1983

DANIEL J. McCARTHY, Director
California Department of Corrections,
and PAUL J. MORRIS, Warden,
California State Prison at Folsom,

Petitioners,

v.

DANIEL L. BRUNO,

Respondent.

REPLY TO BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

JOHN K. VAN DE KAMP,
Attorney General

ANN K. JENSEN
Deputy Attorney General
DANE R. GILLETTE
Deputy Attorney General
6000 State Building
San Francisco, CA 94102
Telephone: (415) 557-14[illegible]5

Attorneys for Petitioners

TOPICAL INDEX

	PAGE
ARGUMENT	1
CONCLUSION	4

TABLE OF CASES

United States v. Young, No. 83-469 cert. granted February 21, 1984, ___ U.S. ___, 104 S.Ct. 1271, 79 L.Ed.2d 676.	2,3,4

No. 83-1571

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ARGUMENT

In his Brief in Opposition respondent states: "Petitioners do not have the temerity to argue to this court that the prosecutor was justified in his vicious attacks on defense counsel"

(Brief in Opp. at p. 7). We have never conceded that the state prosecutor in this case was guilty of misconduct, and did not do so in the Petition for Writ of Certiorari. Rather, we assumed arguendo in light of the state court findings that there was misconduct and focused our argument on the manner in which federal courts on habeas corpus should review such claims.

Approximately three weeks before our petition was filed, this Court granted certiorari in United States v. Young, No. 83-469, cert. granted February 21, 1984, ____ U.S. ___, 104 S.Ct. 1271, 79 L.Ed.2d 676. That case involves an otherwise improper closing argument from the prosecutor, prompted by the defendant's final argument. Among the questions presented is whether the prosecutor's argument was permissible as

a response to the defendant. 52 L.W. 3596.

As noted in our petition, the comments by the state prosecutor at issue in this case all arose in his closing argument and were prompted by respondent's argument. (Pet. at 14-15). We submit that this case presents issues similar to those raised in United States v. Young, and that they could appropriately be reviewed together. As an alternative to full plenary review, we respectfully request that the petition be held pending a decision in Young. Should this court uphold the prosecutor's actions in Young it would be appropriate to remand this case to the Ninth Circuit to decide whether any federal rights were implicated by the state prosecutor's argument. Should the court reject the government's contentions in Young, it could then consider

the specific issues raised in our petition.

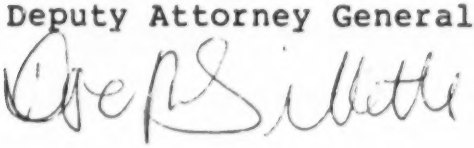
CONCLUSION

For the reasons stated above and in the Petition for Writ of Certiorari, we respectfully submit that certiorari be granted, or that the case be held pending determination of United States v. Young, No. 83-469.

DATED: June 14, 1984

JOHN K. VAN DE KAMP
Attorney General

ANN K. JENSEN
Deputy Attorney General



DANE R. GILLETTE
Deputy Attorney General

Attorney for Petitioners